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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/403,072	01/19/2000	RONNY KNEPPLE	3143-P0082A	6808

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EXAMINER	
LEE, DIANE I	

ART UNIT	PAPER NUMBER
2876	

DATE MAILED: 12/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/403,072	KNEPPLE ET AL.	
	Examin r	Art Unit	
	D. I. Lee	2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 November 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2,5-9,11 and 14-26* is/are pending in the application.

4a) Of the above claim(s) *16-26* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2,5-9,11,14 and 15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *14 July 2002* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

1. Receipt is acknowledged of the Amendment filed 12 November 2003. Claims 2, 5, 7-9, 11, and 14-15 have been amended; claims 10 and 13 have been canceled; and claims 16-26 have been newly added. Currently, claims 2, 5-9, 11, and 14-26 are pending in this application.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12 November 23, 2003 has been entered.

Election/Restrictions

3. Newly submitted claims 16-26 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The originally presented claims 2, 5-11, and 13-15 were directed to the manufacturing process of the sample container applying an identification during the **final cooling phase** of the container.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 16-26 (drawn to applying a marking agent to a surface of the already manufactured container, i.e., after the manufacturing process of the container, by elevating the temperature of the container) withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 2, 5-9, 11, and 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(a) Re claim 14: in lines 2+ read, elevating temperature of the container to an elevated temperature; cooling the container. It is unclear to define the elevated temperature without a reference temperature. Applicant has not clearly provided a reference range of the temperature to define the elevated and cooling temperature of the container. For examining purpose, the above limitations have been translated --the container provided in various temperature, i.e., non-constant temperature--.

(b) Re claim 14: Applicant claims the container in various temperatures, i.e., first unknown temperature (i.e., elevated temperature), second unknown temperature (i.e., cooling the container), and degassing temperature characteristic of the marking agent. It is unclear the relation of the second unknown temperature (i.e., cooling the container) and degassing temperature characteristic of the marking agent. Applicant failed to define the meets and bounds of the claim.

Accordingly, claim 14 and claims depend therefrom, claims 5, 5-9, 11, and 15 are vague and indefinite. Appropriate clarification and/or correction are required.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. **Claims 2, 11, and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fergusson [US 4,004,904] view of what was well know in the art, as exemplified by Quadracci et al. [US 5,347,726-referred as Quadracci].**

Re claims 11 and 14-15: Fergusson teaches a method of manufacturing a container (glass bottle) and marking the container after the containers have been formed, comprising the steps of:

evaluating a temperature of the container to an elevated temperature (hot temperature where the containers are formed by a glass forming machine 5 to produce glass articles 6);

cooling the container (the process of moving the container, while the container is quite hot from the glass forming machine, to a common dead plate 7, onto conveying belts 8, 10 and to a lehr belt 12);

applying a marking agent to a surface of the container while cooling the container (identifying the bottle at the identification area 26 where the containers are marked with a marker 84, e.g., marking the container by ink, see col. 3, lines 8+; col. 4, lines 18+; and figures 1-2).

Note: the temperature of the container is at most high at the glass forming machine and applying the marking agent to a surface of the container takes place a predetermined time later, the transition period of the containers traveling from the glass forming machine to the marking stage would be a cooling phase of the container.

Although Fergusson teaches that applying the marking agent to a surface of the container while cooling the container, Fergusson does not disclose the specific the temperature of the applying the marking agent, i.e., above a degassing temperature characteristic of the marking agent.

The examiner takes Official Notice that drying a marking agent, such as an ink, by a drying means causes to evaporate various solvents and gases from the ink that causes majority of the air contamination is well-known to one of ordinary skill in the art, as evidenced by the Quadracci (see col. 1, lines 59+, for example).

It would have been obvious to an artisan of ordinary skill in the art the time the invention was made to provide the marking operation at the temperature that is above the degassing temperature of the ink for the purpose of evaporating any ink solvents and gases may produced by the marking agent while drying the marking agent before outputting the container as an acceptable ware to be utilized thereafter. Such modification would have created safe and gas-free acceptable ware of containers.

Re claim 2: Although Fergusson is silent with respect to specifics of the elevated temperature interval, i.e., between 300°C and 600°C.

However, it would have been an obvious variation to an artisan of ordinary skill in the art at the time the invention was made to vary the bottle molding temperature to provide specific desire strength of the container. Varying temperature of the bottle material would alter the strength characteristic and the formation of the bottle. Accordingly, it would have been an obvious extension taught by Fergusson.

9. **Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fergusson in view of Baldwin [US 5,5510,610].** The teachings of Fergusson have been discussed above.

Re claims 5-6 and 9: Fergusson does not disclose the formation of marking, such as a bar code symbol or a bar code applied annually onto a cylindrical portion of the container.

Baldwin discloses marking a bottle having a formation of a bar code symbol and/or a bar code applied annually onto the lower part of the cylindrical portion of the container (see figures 4-6), and more.

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the specific marking formations in the teaching of Fergusson in order to optically read the identification data.

Re claim 7: Fergusson as modified by Baldwin does not disclose the formation of marking

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the numerals or letters in the optical identification process of Fergusson as modified by Baldwin to expand the identification labeling technique. Furthermore, applying the identification with numerals or letters in an optical reading process (incorporating optical character reading in the bar code reading) would have been an obvious extension taught by Fergusson as modified by Baldwin for the purpose of providing additional information. Accordingly, it would have been an obvious expedient.

Re claim 8: Fergusson as modified by Baldwin does not disclose the identification is applied in form of numerals or letters.

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to substitute the bar code reading process of Fergusson as modified by Baldwin with an optical reading process by providing the identification code in form of numerals or letters in order to eliminate the computing process in the decoder. Accordingly, it would have been an obvious expedient.

Response to Arguments

10. Applicant's arguments with respect to claims 14 and claims depend therefrom have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Edwards [WO 98/55956] discloses a coding system in a manufacturing process of a container.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. I. Lee whose telephone number is 703-306-3427. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on 703-305-3503. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

Wayne Ah Lee

D. I. Lee
Primary Examiner
Art Unit 2876

D. L.